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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,484

04/12/2006

Justin Douglas King

27351U

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05/28/2009

THE NATH LAW GROUP

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EXAMINER

PATTERSON, MARIE D

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

05/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,484	Applicant(s) KING, JUSTIN DOUGLAS	
	Examiner Marie Patterson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/9/06</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the phrase “shaped to replicate that tail shape of a surfboard” is vague and indefinite because it is not clear what structural limitations applicant intends to encompass with such language. Also this phrase defines the footwear in reference to an undefined and unclaimed element, i.e. a surfboard, which is not claimed as part of a combination and therefore the phrase is unclear, indefinite, and vague. In claims 2-15 any phrase which refers to a “surfboard”, and/or elements of a surfboard is considered to be vague and indefinite for the reasons recited above.

Claim 11 does not appear to recite any new structural limitations, only an intended use and therefore it is not clear what structural limitations applicant intends to encompass with such language.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 9, 11, and 14 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Sole Surfer references (AU 154234, 154427, or 154428).
5. Claims 1-4, 7, 11, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kang (Des 414019).
6. Claims 1, 2, 4, 6, 9, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kurata (Des 189717 or Des 189716).
7. Claims 1, 4, 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Murawski (3599258).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the sole surfer reference as noted in paragraph 4, Kang as noted in paragraph 5, or Kurata (as noted in paragraph 6) in view of Wordsworth (6357146)

The Sole Surfer, Kang, or Kurata shows a sandal shaped like a surfboard substantially as claimed except for two fin shaped raised heel elements. Wordsworth teaches providing fin shaped (3) raised heel elements. It would have been obvious to

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provide fin shaped elements as taught by Wordsworth in the footwear of any one of The Sole Surfer, Kang, or Kurata to increase traction.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over The Sole Surfer, Kang, Kurata, or Murawski.

The Sole Surfer, Kang, Kurata, or Murawski shows a sandal shaped like a surfboard substantially as claimed except for indicia on the top of the sole. It is well known and conventional to provide indicia on the top of sandals. It would have been obvious to provide indicia on the top of the sandal of any one of The Sole Surfer, Kang, Kurata, or Murawski as is well known and conventional to provide advertisement, ornamentation, etc..

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over in view The Sole Surfer, Kang, Kurata, or Murawski in view of Martinez Jr. (5038499).

The Sole Surfer, Kang, Kurata, or Murawski shows a sandal substantially as claimed except for a strap at the heel end of the footwear for retaining the footwear on an appendage. Martinez, Jr. shows a strap comprising a length of cord, a loop end, and lock pin (figures 4-6) for attachment to footwear for retaining the footwear on an appendage. It would have been obvious to provide a strap as taught by Martinez, Jr. in the sandal of The Sole Surfer, Kang, Kurata, or Murawski to assist in retaining the footwear on the user.

12. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the sole surfer reference as noted in paragraph 4, Kang as noted in

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paragraph 5, or Kurata (as noted in paragraph 6), or Murawski in view of Calderon (3984926)

The Sole Surfer, Kang, Kurata or Murawski shows a sandal shaped like a surfboard substantially as claimed except for a heel pad. Calderon teaches providing a heel pad (12) to increase comfort. It would have been obvious to provide a heel pad as taught by Calderon in the footwear of any one of The Sole Surfer, Kang, Kurata, or Murawski to increase comfort.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Patterson/
Primary Examiner
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